

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

JOHN WESTERMAN,

Plaintiff,

v.

K-MART CORPORATION,

Defendant.

:
:
:
:
:
:
:
:
:
:

CASE NO.: _____

**NOTICE OF REMOVAL FROM STATE COURT
FILED BY DEFENDANT KMART CORPORATION**

Defendant Kmart Corporation (“Kmart” or “Defendant”), misidentified in the caption as “K-Mart Corporation,” files this Notice of Removal From State Court pursuant to 28 U.S.C. §§ 1441(a) and (b) and 1446, the grounds for which are as follows:

1. This action was commenced by plaintiff, John Westerman (“Plaintiff”), in the Court of Common Pleas of Philadelphia County, Pennsylvania, at Docket No. 130801752 by filing a Praecipe to Issue Summons and Summons in Civil Action on August 16, 2013.
2. On November 14, 2013, Defendant filed a Praecipe and Rule to File Complaint.
3. On November 20, 2013, Plaintiff filed a Complaint in the Court of Common Pleas of Philadelphia County, Pennsylvania.
4. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the Praecipe to Issue Summons and Summons in Civil Action and the Complaint, which comprise all of the “process, pleadings, and orders served upon . . . defendant . . . in such action,” are attached hereto as Exhibit A and incorporated herein by reference.
5. On November 21, 2013, a Case Management Conference took place in the Court of Common Pleas of Philadelphia County, Pennsylvania.

6. In connection with the November 21, 2013 Case Management Conference, Plaintiff submitted a Case Management Conference Memorandum in which he alleged a claim for damages in the amount of \$75,000.00.

7. There have been no other proceedings in this action.

8. Plaintiff has asserted that he is a citizen of the Commonwealth of Pennsylvania and resides at 16 Goodrock Road, Levittown, Pennsylvania. Exhibit A – Complaint at ¶ 1.

9. Kmart Corporation is incorporated in the State of Michigan and maintains its principal place of business in Illinois. Verified Statement of Angela McGinnis (hereinafter “McGinnis Statement”) at ¶ 2, a true and correct copy of which is attached hereto as Exhibit B and incorporated herein by reference.

10. As such, for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a), Plaintiff is a citizen of Pennsylvania and Kmart is a citizen of Michigan and Illinois.

11. In the Complaint, Plaintiff has alleged two causes of action against Kmart: (1) age discrimination; and (2) disability discrimination. See Exhibit A – Complaint.

12. Plaintiff further alleges that “Defendant is an employer to which the Pennsylvania Human Relations Act applies, as well as federal law, due to age and disability.” Exhibit A – Complaint at ¶ 6 (emphasis added).

13. In the Complaint, Plaintiff seeks, among other things:

- (A) Compensatory damages;
- (B) Back pay with interest;
- (C) Front pay;

(D) Attorney's fees, expert witness fees and other costs of suit; [and]

(E) Other relief which the Court deems appropriate.

Exhibit A – Complaint at Wherefore clause.

14. Plaintiff alleges that his employment with Kmart terminated on March 24, 2009.

Exhibit A – Complaint at ¶ 10; McGinnis Statement at ¶ 4.

15. At that time, Plaintiff's annual salary was approximately \$59,530.00. McGinnis Statement at ¶ 5.

16. Accordingly, based upon the allegations in the Complaint and the claim for damages set forth in Plaintiff's Case Management Conference Memorandum received on November 21, 2013, the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

17. Jurisdiction over the subject matter of this action is conferred on this Court by both 28 U.S.C. §§ 1331 and 1332(a).

18. The present lawsuit is removable from state court to the District Court of the United States pursuant to 28 U.S.C. §§ 1331 and 1441(a) because it is a civil action arising under the Constitution, laws, or treaties of the United States. Specifically, Plaintiff's claims for age and disability discrimination are causes of action that arise under the laws of the United States.

19. The present lawsuit is also removable from state court to the District Court of the United States pursuant to 28 U.S.C. §§ 1332(a) and 1441(b) because it is a civil action in which there is complete diversity of citizenship between Plaintiff and Kmart and in which the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

20. Pursuant to 28 U.S.C. § 1367, the Court may exercise supplemental jurisdiction over Plaintiff's claims under the Pennsylvania Human Relations Act.

21. This Notice of Removal From State Court is timely, it being filed within 30 days of the receipt by Kmart of the Complaint setting forth the claims for relief upon which the action is based, as provided by 28 U.S.C. § 1446(b). The Complaint was the first pleading pursuant to which Kmart understood that it had the right to remove this case from state court to the United States District Court.

22. Written notice of the filing of this Notice of Removal From State Court has been served on the Plaintiff in accordance with 28 U.S.C. § 1446(d).

23. To effect removal of this action pursuant to 28 U.S.C. § 1446(d), Kmart, upon filing the Notice of Removal From State Court in the Office of the Clerk of the United States District Court for the Eastern District of Pennsylvania, is also filing a true and correct copy of this Notice of Removal From State Court with the Prothonotary of the Court of Common Pleas of Philadelphia County, Pennsylvania.

Respectfully submitted,

FISHER & PHILLIPS LLP

Dated: December 11, 2013

By: 

Todd Alan Ewan, Esquire
Christin Choi, Esquire
Radnor Financial Center, Suite 650
201 King of Prussia Road
Radnor, Pennsylvania 19087
Telephone: (610) 230-2140/2173
Facsimile: (610) 230-2151
tewan@laborlawyers.com
cchoi@laborlawyers.com

*Attorneys for Defendant Kmart
Corporation*